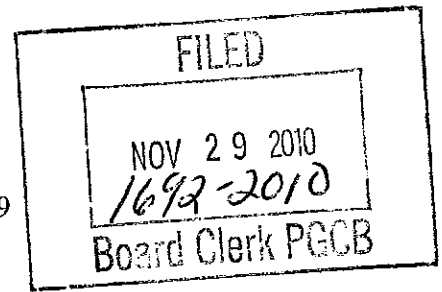


**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**



In re: Mason-Dixon Resorts, L.P. : PGCB Docket Number: 46549
:
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**MASON-DIXON RESORTS, L.P.'S POST-HEARING BRIEF
PURSUANT TO 58 PA CODE §441a.7(u)**

Applicant, Mason-Dixon Resorts, L.P. ("Mason-Dixon Resort" or "MDR"), by and through its undersigned counsel, hereby submits this Post-Hearing Brief in support of its application for a Category 3 slot machine license pursuant to 58 Pa. Code §441a.7(u).

SUMMARY OF ARGUMENT

**MASON-DIXON RESORT - - SOLID EVIDENCE OF SUCCESS;
NEMACOLIN, FERNWOOD AND PENN HARRIS - - A "LEAP OF FAITH"**

Attributes of Mason-Dixon Resorts, LP:

- Top PA tourism destination
- Straightforward, reliable revenue numbers
- Fully funded with available cash by contractual commitment, not lenders
- Integrated Resort and Casino – Physically and by Management
- Developer/Operator proven record in PA
- Least impact on current Licensees
- Overwhelming support by local community and authorities
- Best Opportunity to draw revenue from outside PA
- 40-year old Resort and Convention history using no new "green" space
- Least impact on Horsemen, Breeders and Racing

LEGAL ARGUMENT

I. MDR IS A WELL-ESTABLISHED RESORT HOTEL SATISFYING ALL ELIGIBILITY REQUIREMENTS FOR LICENSURE AS A CATEGORY 3 SLOT MACHINE FACILITY UNDER THE ACT.

The criteria for eligibility for a Category 3 slot machine license is set forth in Sections 1305 and 1325 of the Gaming Act, 4 Pa.C.S. §§ 1305 and 1325, as amended (the “Act”) as well as in Pennsylvania Gaming Control Board (“PGCB” or the “Board”) Regulations. 58 Pa. Code §§ 441a.3, 441a.5, 441a.7, 481a. MDR satisfies all of the eligibility requirements for a Category 3 slot machine license, while each of the other applicants lacks at least one of the required elements for licensure.

The characteristics of a “well-established resort hotel” are defined under the Act. In order to be eligible for a Category 3 slot machine license, the Applicant must establish by clear and convincing evidence, *inter alia*, the following: (1) that at the time of application, the resort hotel has no fewer than 275 guest rooms; (2) under common ownership; and, (3) having substantial year-round recreational guest amenities.” 4 Pa.C.S. § 1305(a)(1); 58 Pa. Code § 441a.1, 441a.23(a); and, In re: Application of Valley Forge Convention Center Partners, LP, PGCB Docket No. 19421 (May 8, 2009) (“Valley Forge Adjudication”) at 2-3, 6, 29-30.

- MDR has *307 hotel rooms* that are available for rental year-round, and which are integrated into the Eisenhower Hotel and Conference Center (“Eisenhower”). *The Resort has been in existence for 40 years, much longer than Nemacolin*. See Excerpt from N.T. of MDR Licensing Hearing (“MDR Transcript”) at 15:21, 38:16.
- MDR satisfies the *common ownership* requirement, since *at the time its application for licensure was filed* with the PGCB, it had, and continues to maintain, a *non-contingent* agreement that expressly provides for equitable ownership of the Eisenhower under Pennsylvania law. See MDR Transcript at 156:1-157:19. MDR’s agreement of sale is modeled from, but more comprehensive than the Valley Forge agreement approved by the Board. Id.
- MDR has *substantial year-round recreational guest amenities*. In the Valley Forge Adjudication, the Board held as follows:

To qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the hotel must offer a complement of amenities characteristic of a well-established resort hotel, including, but not limited to, the following:

- | | |
|---|--|
| (1) Sports and recreational activities and facilities such as a golf driving range; | (6) Entertainment facilities; |
| (2) Tennis Courts; | (7) Restaurant Facilities; |
| (3) Swimming Pools; | (8) Downhill ski or cross-country skiing facilities; |
| (4) A health spa; | (9) Bowling Lanes; and, |
| (5) Meeting and banquet facilities; | (10) Movie theaters. |

(citing, 58 Pa. Code § 441a.23(a)). Valley Forge, which was awarded a Category 3 license, has 3 of the 10 amenities listed above. ***MDR has 8 of the 10 amenities on the above list***, and with its Mason-Dixon Pass provides for downhill skiing and golf. In addition, Mason-Dixon has camping, boating, fishing, athletic fields, an outdoor stage, and basketball and volleyball courts. Most of its amenities will remain. See Correspondence to Chairman Fajt, dated November 24, 2010, and exhibits appended thereto (“MDR’s Response to Board Requests”).

It is also significant that in the Valley Forge Adjudication, the Board expressly relied upon the testimony and written reports of Peter Tyson, Vice-President of PKF Consulting, in support of its conclusion that Valley Forge satisfied the Act’s eligibility requirements:

The record indicates that Valley Forge operates a well-established resort hotel with substantial year-round guest amenities. At its eligibility hearing, Peter Tyson, the Vice-President of PKF Consulting, presented expert testimony on Valley Forge Convention Center’s status as a resort hotel. Mr. Tyson, who has over thirty-five (35) years of experience in the Pennsylvania hospitality industry and is a consultant for the Greater Philadelphia Tourism and Marketing Corporation as well as the Philadelphia Convention and Visitors Bureau and has extensive experience in market evaluations and property positioning, testified that the facilities and amenities at the Valley Forge Convention Center are quite appropriate to a resort-type property and are unique to a degree for hotels in the Philadelphia area. ...

Valley Forge Adjudication at 30-31. Mr. Tyson also provided expert reports and testimony in conjunction with MDR’s licensing hearing, and similarly concluded that MDR satisfied the eligibility requirements for licensure as a Category 3 slot machine facility. See PKF Consulting Report entitled, “Estimates of Gaming Revenue and Net Operating Income – The Proposed Mason-Dixon Resort & Casino”, February 26, 2010 (“PKF Report”), at 9-11, attached as Exhibit L to MDR’s Revised Pre-Hearing Memorandum.

Accordingly, the Board should determine that MDR has established by clear and convincing evidence that it satisfies all eligibility requirements for licensure as a Category 3 slot machine facility.

II. NEMACOLIN AND FERNWOOD ARE INELIGIBLE FOR LICENSURE AS CATEGORY 3 SLOT MACHINE FACILITIES.

A. Nemacolin is Ineligible for Three Key Reasons

It is respectfully submitted that three threshold questions of legal eligibility exist for Woodlands Fayette, LLC (“Nemacolin”).

1. Nemacolin’s Proposed Gaming Facility is 1.3 Miles from the Resort Complex.

Nemacolin is not eligible for a Category 3 slot machine license, as its proposed facility is located 1.3 miles away from its resort complex, and is inaccessible from the hotel other than by roadway. The Gaming Act specifies that a Category 3 licensed facility must be located “*in* a well-established resort hotel,” 4 Pa. C.S. § 1305(a)(1).

During its licensing hearing, Nemacolin attempted to obscure the distance between its proposed casino and their accommodations, representing that the casino would be located .38 miles from the accommodations at Falling Rock, and .86 miles from The Chateau. See N.T. from Nemacolin Licensing Hearing (“Nemacolin Transcript”) at 132:15-18. Nemacolin’s testimony regarding the straight line distance understates the effective distance that would actually have to be traveled by customers however, since the proposed casino is only accessible by roadway. Portal to portal, the driving distance between the casino is 1.3 miles away from the accommodations, clearly not walking distance in good or bad weather. See MDR Transcript at 87:5-12. See also, Report of The Fine Point Group, “Convenience of Casino to Hotel” attached as Exhibit A to MDR’s Comparative Notice. The other resort amenities are even further away from the casino. During Nemacolin’s 2006 licensing hearing, its Director of Resort Operations, Trey Matheu, admitted that Nemacolin’s proposed gaming facility was located “approximately 1 mile from the central resort check-in facility.” See Excerpts from N.T. of Nemacolin Suitability Hearing, October 25, 2006 (“2006 Nemacolin Transcript”) at 16:4-6, attached hereto as Exhibit A.

In reality, as described below, Nemacolin’s proposal to implement the “Lady Luck Casino” brand strategy confirms that their intention is to operate a small, stand-alone locals casino, having little connection

with the resort itself. See 4 Pa.C.S. §1305(a)(1). See Report of The Fine Point Group and, Revised Site plan prepared by Ewing Cole, attached as Exhibits A and E to MDR's Notice of Intent to Present Comparative Evidence ("MDR's Comparative Notice") to Nemaocolin and Bushkill Group, Inc. ("Fernwood").

2. Nemaocolin Lacks the Requisite Number of Rooms for a Category 3 License.

Nemaocolin is similarly not eligible for a Category 3 slot machine license, as it failed to clearly and convincingly prove that it has 275 guest rooms *under common ownership* required by the Gaming Act. See 4 Pa.C.S. §1305(a)(1). Nemaocolin's internet website indicates that the Chateau Lafayette has 124 guest rooms, and that Falling Rock has 42 rooms. Upon information and belief, the Lodge contains 76 guest rooms, for a total of 242 rooms available year round. See Excerpts from Nemaocolin Woodlands Resort website, attached to MDR's Comparative Notice as, Exhibit I. Nemaocolin's representatives acknowledged this limitation during their November 17, 2010 suitability hearing. Specifically, Mr. Chris Plummer, general manager of Nemaocolin Woodlands, confirmed that Falling Rock is not available to the general public during the months of November through April. See Nemaocolin Transcript at 100:24-25 and 101:1-6.

3. Nemaocolin's Financial Suitability is Questionable.

Nemaocolin's licensing hearing was the first opportunity for outside parties, like MDR, to learn of the details of Nemaocolin's ownership structure, debt exposure and financial condition. The questions aptly posed by Commissioner Trujillo and other Board members revealed substantial questions about the relationship between the holdings of the Nemaocolin Woodlands Resort, and other holdings of the 2001 Irrevocable Trust for Margaret H. Magerko ("2001 Trust"), such as 84 Lumber. Apparently, the Trust holds a majority stake (52%) in this lumber company, which recently had to secure loan guarantees from local county governments as a consequence of its debt crisis, and owns all (100%) of the Nemaocolin resort. See Nemaocolin Transcript at 118. It was evident from the comments of Nemaocolin's representatives that Nemaocolin's fate is intertwined with that of 84 Lumber and its other affiliates.

Isle of Capri specifically does not have the right to operate the resort hotel or amenities. In the early stages of a business relationship companies always claim that their “philosophies mesh well” however the Gaming Act requires more than philosophical harmony. Applicants are required to affirmatively prove by clear and convincing evidence the capability of its financial resources, and backers. Notably, the applicant “shall produce whatever information, documentation or assurances the board requires to establish by clear and convincing evidence the adequacy of financial resources.” In all past hearings for potential Category 1, 2 and 3 license applications, a written commitment of funding has always been a hallmark of this Board’s eligibility review.

Testimony from lenders was notably absent from the Nemacolin presentation. There was no testimony from lenders or financial backers of 84 Lumber, nor from the 2001 Trust’s lenders; or any representative from Isle’s lender or line of credit provider. Further, the relationship of the Isle of Capri funding to the Nemacolin resort operations, and cash flow, were not fully set forth at the hearing. How is Isle of Capri secured? When it was stated that Isle could step in and pay the debt service of Nemacolin in another “doomsday” setting, what impact does that have on the operation of the resort? How is the first lien related and protected from Isle or its lender’s rights? Based on the limited information provided at the public hearing, it appears that the financial eligibility of Nemacolin warrants significant scrutiny from the Board and its financial staff.

Perhaps most significantly, in a recent investor conference call, Isle of Capri recognized that it does not currently have the capacity to finance both the Nemacolin and Cape Girardeau projects without seeking additional sources of credit. See Section III(A)(6)(b), *infra*.

Nemacolin asks the Board to make a “leap of faith” that the ongoing financial troubles of the 2001 Trust and its holdings will not spill over to the resort, and that Isle will be willing and able to step in and operate the resort if the “doomsday” scenario comes to pass.

B. Other Applicants for Category 3 Licensure are also Ineligible.

It is respectfully submitted that threshold questions of eligibility for licensure also exist for the other Category 3 license applicants.

1. Fernwood's "906 Keys" Were Not Clearly and Convincingly Identified as Being Held "Under Common Ownership."

Despite numerous references to the hundreds of keys that might exist at the Fernwood resort, it was entirely unclear which "keys" were owned by the applicant and which were owned by others, whether groups or individuals. No evidence was presented as to how many owners have already acquired timeshare weeks, but clearly those patrons' purchasing decisions were not motivated by gaming. It was clear that Fernwood's primary goal here is to sell timeshare units (*I mean, that's why we're here.*) (See Fernwood Transcript at 156). However, despite this ulterior motive, there was no legal basis provided to assure the Board that a timeshare, deeded to an owner for a specific period of time, qualifies to create or meet the "under common ownership" eligibility criteria required under 4 Pa.C.S. § 1305(a)(1).

2. Penn Harris Gaming, L.P.

In the interest of brevity, MDR incorporates by reference the following documents previously filed with the Board: (1) MDR's Notice of Intent to Present Comparative Evidence ("MDR's Comparative Notice") to Penn Harris Gaming, L.P.; (2) MDR's Reply to Penn Harris Gaming, L.P.'s Comparative Notice (both of which were filed by MDR's co-counsel Archer & Greiner, P.C.); (3) the Petition to Intervene in Penn Harris Gaming, L.P.'s License Application filed by Mountainview Thoroughbred Racing Association; and, all relevant testimony and evidence presented during licensing hearings.

III. MDR IS THE MOST SUITABLE APPLICANT FOR A CATEGORY 3 SLOT MACHINE LICENSE.

A. MDR's Revenue Projections are Real, and Rely on Actual PA Revenue History.

1. Nemaocolin's Revenue Projections Rely On Unrealistic Assumptions, and are Inconsistent With Historical Data.

MDR's revenue projections were calculated by Peter Tyson of PKF Consulting using the drive-time, or gravity model methodology. See MDR Transcript at 46 and PKF Report, Exhibit L to MDR's Revised Pre-Hearing Memorandum. Mr. Tyson was previously recognized by the Board as an expert witness in the Valley Forge proceedings.

All of the Applicants for a Category 3 license utilized the gravity model, and James Perry, Chairman and CEO of Isle of Capri Casinos ("Isle" or "Isle of Capri"), as well as Dr. Anthony Mumphrey for Nemaocolin, testified that the gravity model was the "gold standard" approach for projecting gaming revenue. See Nemaocolin Transcript at 67, 83; Excerpts from N.T. of Fernwood Licensing Hearing ("Fernwood Transcript") at 115-116; and, Excerpts from N.T. of Penn Harris Gaming, L.P. Licensing Hearing ("Penn Harris Transcript") at 80-83, 130-131, 197. It is respectfully submitted that the Board must assess the reliability of the results of each Applicant's projections by considering the *reasonableness* of the assumptions utilized in constructing the various models.

MDR's Revenue Projections were developed using *30-minute* and *60-minute* drive-time zones. See PKF Report, Exhibit L to MDR's Revised Pre-Hearing Memorandum at 11-12; MDR Transcript at 46:24-47:2. In contrast, the gravity model constructed by Nemaocolin's expert, TMG Consulting, assumed a *200-mile*, or *eight hour total drive time* zone. See Nemaocolin Transcript at 72:4. In a supplemental report dated November 23, 2010, Peter Tyson of PKF Consulting explains why the use of such a large drive time zone is inappropriate, and yields completely unrealistic results:

The TMG report never addressed the obvious question, in our mind, as to how many people would be willing to spend up to four hours driving to a freestanding gaming venue located some 19 miles from the nearest major highway then another four hours to return home the same day when many gaming venues were located within

comparatively short drives of their origins in Pennsylvania, Maryland, West Virginia, New York and Delaware and soon in at least four locations in Ohio. Again, this 'local'/day-drive market was estimated by TMG to generate \$46.6 million in gaming revenue in 2012, or some 68 percent of the total \$68.4 million in gaming revenue estimated for Nemacolin in that year.

See PKF Consulting Supplemental Report, dated November 22, 2010, attached as Exhibit 2 to MDR's Response to Board Requests.

It should also be noted that given the restrictions on entry applicable to Category 3 facilities, the customer would presumably also be spending at least some amount of time engaged in an activity other than gaming. The absurdity of Nemacolin's drive-time assumption was illustrated by Commissioner Ginty's questions to Nemacolin's expert, Dr. Anthony Mumphrey, during Nemacolin's Licensing Hearing:

MR. GINTY: I mean, I want to understand. I mean, if you go out 200 miles, you're talking about a roundtrip of eight hours driving. So, these --- would these be --- would these include people that would come to the Woodlands for the day to play golf or ---?

Dr. Mumphrey: They would come to the Woodlands and they might go home and they might not go home, but they wouldn't stay at the Woodlands. These are guests in addition to the hotel guests. You know, they might stay somewhere, going back to the --- you know, to the 200-mile radius along the way, but they would be attracted by the experience at the Woodlands Resort.

See Nemacolin Transcript at 80:17-81:5.

Nemacolin's reliance on entirely unrealistic assumptions renders their revenue projections unreliable. This point is confirmed when Nemacolin's projections are compared against actual historical revenue data of existing Pennsylvania casinos in the Southwestern Pennsylvania region. See Report of The Fine Point Group, "Win Per Unit Averages" attached as Exhibit A to MDR's Comparative Notice (indicating that the WPU averages of The Meadows and The Rivers casinos, which are closest to Nemacolin were \$195 and \$202, respectively, while Nemacolin's projected WPU is \$244).

Even more telling is Nemacolin's testimony in 2006 where it was confirmed that the resort casino at Nemacolin "won't fly" if it relies on only hotel patrons, hotel guests, or patrons of one of the non-gaming amenities. See Exhibit A, 2006 Nemacolin Transcript at 52:7-18.

MDR submits that the potential revenues that would accrue from the substantial tourism market that already exists in Gettysburg would be significantly greater than Nemaacolin's projections based on customers driving from hours away to its remote location to use their "zip-line" or visit their zoo or car collection.

2. Nemaacolin's 2010 Projections Deviate Significantly from the Projections it Submitted to the Board in 2006.

A side-by-side comparison of the projections submitted by Nemaacolin and MDR illustrates how the unreasonableness of the assumptions made impacts the results obtained, and the reliability of the study overall:

Nemaacolin - Comparison of 2006 and 2010 Projections¹

<u>2006 Projections</u>	<u>2010 Projections</u>
Gross Terminal Revenue (500 Machines) - \$34.492M	Gross Gaming Revenue (600 Machines; 28 Tables) - \$66.8M
Slot Win Per Day - \$189	Win Per Unit - \$244

It should be noted that the GVA Marquette Advisors' projection of Nemaacolin's revenue in 2006—\$189 win per unit per day—is not even close to Nemaacolin's 2010 projection of \$244. The Board's Financial Suitability Task Force projected Nemaacolin's slot win per day at \$164 in 2006, even further from Nemaacolin's current estimate. See Excerpt from PGCB Report of the Financial Suitability Task Force, attached as Exhibit B. Similarly, Nemaacolin's current Gross Gaming Revenue projection is nearly *double* its 2006 projection, with the addition of just 100 slot machines and 28 table games. Nemaacolin's projections are particularly unreasonable since they inexplicably disregard actual revenue data available for Pennsylvania. Conversely, the projections submitted by MDR in 2010 are generally consistent with earlier projections for the Crossroads project in Gettysburg:

¹ The Board's Financial Suitability Task Force estimated Nemaacolin's Gross Terminal Revenue \$29.93M, and Slot Win Per Day at \$164.

MDR - Comparison of 2006 and 2010 Projections²

<u>2006 Projections</u>	<u>2010 Projections</u>
Gross Terminal Revenue (3,000 Machines) - \$289.25M	Gross Gaming Revenue (600 Machines; 28 Tables) - \$83M
Slot Win Per Day - \$264	Win Per Unit - \$275

MDR's Gross Gaming Revenue Projection is approximately 30% of the 2006 Crossroads projection, which is consistent with the reduction from 3,000 to 600 machines. Moreover, the win per unit/win per day projections are also nearly constant.

Despite its attempt to distinguish itself, the vision for Nemaocolin's project and its overall strategy is the same as that of its competitor, The Greenbrier Resort in West Virginia, which Nemaocolin admits has performed poorly. See Nemaocolin Transcript at 145:9-18 ("If you look at their [*i.e.*, The Greenbrier Resort's] occupancy, I mean, they suck right now. Their rate is at a \$59 rate, they can't give rooms away. Again, and I agree with you in that their gaming facility is just doing terrible.") As per the testimony of Randall Fine and Peter Tyson, Nemaocolin's revenue projections are unreasonable, while MDR's are consistent with historical revenue data.

3. Nemaocolin's Estimates of Customer Attendance and Employment Are Completely Inconsistent With their 2006 Submission to the Board.

In addition to being premised on unrealistic assumptions, this Board should also take note of the fact that Nemaocolin's projections for *customer attendance* have *more than doubled* since the submission of their 2006 Local Impact Report, while their estimates as to the *number of additional employees has been halved*:

<u>2006 Local Impact Report[*]</u>	<u>2010 Local Impact Report</u>
650 Weekday Daily Customers	1,341 Weekday Daily Customers
1,000 Weekend Daily Customers	2,682 Weekend Daily Customers
172 Day Shift Additional Employees	80 Additional Employees (Days)
172 Evening Shift Employees	106 Additional Employees (Evenings)
	80 Additional Employees (Grave)

^{*}Source: 2006 McMillen Engineering
Report / 500 Slot Machines

^{*}Source: 2010 McMillen Engineering
Report / 600 Slot Machines / 28 Table
Games

² The Board's Financial Suitability Task Force estimated Crossroad's Gross Terminal Revenue \$277.55M, and Slot Win Per Day at \$253, assuming 3,000 machines.

Common sense dictates that the addition of 100 slot machines and 28 table games is not a sufficient basis for doubling projected attendance, particularly since there is currently much more competition among gaming revenues than existed in 2006, and given what has been an economic downturn of historic proportions. The idea of servicing more than twice as many customers with half the number of employees is on its face equally illogical, and further calls into question the validity of the information Nemaquin has provided the Board in support of its application generally.

4. Fernwood's Revenue Projections Substantially Exceed Actual Results Achieved in Pennsylvania and Almost Any Other Gaming Jurisdiction.

Fernwood's Gross Gaming Revenue and Win Per Unit (WPU) estimates are greater than three times the projections it submitted in 2008. Fernwood's WPU estimate of \$513 is significantly greater than any existing facility or applicant, and is far in excess of the WPU attained by the best performing casino in Pennsylvania in Fiscal Year 2009-2010 (Parx-\$317 to \$363). Fernwood's WPU estimate is *over 2.5 times the highest Win Per Day achieved by Mount Airy* during Fiscal Year 2009-2010 (\$189). See also, Report of The Fine Point Group attached as Exhibit A to MDR's Comparative Notice, "Gross Gaming Revenue Estimates," "Win Per Unit Averages," "Win Per Unit Estimates," "Competitive PA Situation."

In addition, Fernwood's revenue projection is premised largely upon the fact that over 28 million people reside within a 100-mile radius of its property.³ See Fernwood Transcript at 13:16, 59:7-8, 99:12-13, 103:15, 149:16. Yet, Fernwood is located closest to the Mount Airy Casino Resort ("Mount Airy"), which currently yields the lowest Win Per Unit of the existing Pennsylvania casinos. See MDR Transcript at 82:7-9; Report of The Fine Point Group attached as Exhibit A to MDR's Comparative Notice, "Win Per Unit Averages." Aside from having more available "keys," Fernwood offers no plausible explanation as to why more of this supposedly underserved market is not currently captured by Mount Airy, or Sands Bethlehem and Mohegan Sun at Pocono Downs, given their close proximity to Fernwood. The Mt. Airy facility even offers newer, updated resort and hotel amenities. Mt. Airy, along with the Sands and Mohegan properties,

³ This equates to a *4-hour round trip* for drive-in customers.

market heavily to the Northern New Jersey and New York marketplace. Further, Sands Bethlehem is currently building a hotel which will add still more new hotel rooms at a nearby gaming facility.

Despite the unrealistic optimism pervading its analysis, Fernwood fails to incorporate the maximum number of slot machines and table games permitted for Category 3 facilities. See MDR Transcript at 81:4.

5. Nemaquin and Fernwood are Equally, if not More Reliant on Drive-In Customers than MDR.

Both Nemaquin and Fernwood attempted to distinguish their facilities by claiming that they are “resort” casinos and not “mini” Category 2 casinos. See Nemaquin Transcript at 58:2 53:7-10, 61:8-11; Fernwood Transcript at 165:25. These claims are belied by the extent to which each of those projects anticipates they will service drive-in customers. In reality both Nemaquin and Fernwood rely as heavily on drive-in customers as MDR, if not more so. However, the metropolitan areas that surround Fernwood and Nemaquin are already saturated.

As noted above, Nemaquin’s expert testified that \$46.6 million, or 68% of the total \$68.4 million in gaming revenue Nemaquin estimated it would earn in 2012, would be derived from drive in customers. Fernwood relies on a 4-hour round trip to obtain 2/3 of its gaming revenue, despite the fact that there are several existing Pennsylvania casinos in this region, and more out of State.

Fernwood also expressly relied on the drive-in market, however its focus on the statistic that 28 million people reside within a 100-mile radius of its property, ignores the presence of existing licensees in the region. Fernwood’s Nemaquin-like model relies heavily on gaming patrons, not resort guests, who presumably will drive hours to visit the Poconos for a day of gaming. The Commonwealth’s own gaming revenue statistics, and proper application of the universally recognized gravity model refute this conclusion.

6. Isle of Capri Intends to Operate a “Locals” Facility at Nemaquin.

The fallacy of the representations made by Isle of Capri to this Board are revealed by the prospective operator’s recent presentation to the Missouri Gaming Commission. In its presentation to the Missouri Gaming Commission just one month ago, Isle describes its two-brand strategy featuring the “Lady Luck

Casino”—which it proposes to operate at Nemaquin—and the “Isle Casino” which it operates at other locations. Isle’s presentation contains the below slide which identifies the core attributes of the respective strategies for each of these brands:

Our two brand strategy expands the customer base with two products in the same family

	
Focus on <u>close proximity</u> patrons <u>Limited</u> amenities <u>Product</u> driven (gaming devices)	Focus on regional patrons <u>Expanded</u> amenities Conference and <u>experience</u> driven

Notably, the Lady Luck Casino is characterized by its “Focus on close proximity patrons,” slot machines, and, “Limited amenities”—precisely the opposite of what Nemaquin and Isle of Capri represented to this Board was their intention in Pennsylvania. (emphasis in original). Conversely, its “Isle Casino” brand is geared towards attracting “regional patrons” and offers “Expanded amenities[.]”(emphasis in original). Isle of Capri’s decision to utilize the Lady Luck Casino brand in conjunction with the Nemaquin project confirms their intention not to operate a destination resort with a casino amenity as they claim, but rather to divert local customers from The Meadows and The Rivers casinos. By locating its “Lady Luck” casino in a free-standing building, on a highway remote from the hotel, spa, ballrooms and other resort amenities, Nemaquin/Isle made a conscious decision to operate a “locals” casino as a Category 3 facility, while stating the opposite to this Board. See Excerpts from Isle of Capri PowerPoint Presentation to Missouri Gaming Commission, attached as Exhibit C.

B. MDR is Superior to the Other Category 3 Applicants, Since it is Being Financed Entirely by Penn National Using Available Cash.

Section 1313 of the Act requires the Applicant to prove by clear and convincing evidence that it maintains the financial wherewithal to build and operate a successful project. 4 Pa.C.S. § 1313. MDR is the most suitable applicant for a Category 3 slot machine license from the standpoint of its financial fitness and operational viability, as it is being financed in its entirety by Penn National using available cash. During MDR's Licensing Hearing, Steven Snyder, Senior Vice-President of Corporate Development for Penn National Gaming, Inc. ("Penn National Gaming") testified:

We have made a commitment to this project, as you will see here, to provide ***100 percent of the financing*** necessary to complete the renovation of the Allstar facility into a Category 3 casino facility. There are ***no third-party approvals necessary from any banks or funding sources***. We stand before you today as the financing source for the entirety of the development project for the 2 Mason-Dixon Casino Resort development.

See MDR Transcript at 63:13-64:2 (emphasis added). This was probed further by Commissioner Trujillo, and again Penn National confirmed that it has ***contractually committed its existing cash*** to the MDR project, and will not go to outside sources to obtain financing. See MDR Transcript at 163:19-164:10. Accordingly, MDR stands head and shoulders above the other Category 3 applicants in this regard, all of which are dependent upon contingent financing to complete their projects.

In contrast to MDR, Nemaquin's project is being financed by Isle of Capri. James Perry testified that his company had the financial capability to execute the Nemaquin project, as the company generated \$60 million annually in free cash flow, and as there was "over \$100 million of financial capacity" in Isle of Capri's revolving credit facility. See Nemaquin Transcript at 27:21-28:2. Isle of Capri's ability to finance all of the projects in its development pipeline was challenged by Mr. Fine, Managing Director of The Fine Point Group, during MDR's Licensing Hearing. Mr. Fine drew several key distinctions between Penn National Gaming's financial condition and that of Isle of Capri:

- Penn National Gaming has approximately 7 times as much liquid cash as Isle of Capri.
- Isle of Capri is currently pursuing two major development projects with a combined cost of \$175 million (\$50 million for Nemacolin, and \$125 million for the Cape Girardeau project in Missouri).
- Isle of Capri has \$63 million cash on hand, and the ability to borrow approximately \$110 million.
- Were Isle of Capri to attempt to complete both the Nemacolin and Cape Girardeau projects, it would be left with no cash on hand, and no capacity to borrow additional funds.

See MDR Transcript at 89:25-90:1; 90:19-91:1; Report of The Fine Point Group, attached as Exhibit A to MDR's Comparative Notice, "Current Liquidity (Millions)" and, "Isle Commitment Risk."

In response to Mr. Fine's testimony, Mr. Perry represented to the Board that "the timing of this project [*i.e.*, Nemacolin] relative to those projects clearly gives us the cushion to be able to get this project open and operating as soon as possible after the decision by the Commission." Mr. Perry's testimony relating to the speed with which Isle of Capri could open Nemacolin is clearly unresponsive to the concern reflected in Mr. Fine's testimony—*i.e.*, that Isle of Capri would not be able to finance both the Nemacolin and Cape Girardeau projects simultaneously. Significantly, neither Mr. Perry nor any other witness presented by Nemacolin and/or Isle of Capri challenged the accuracy of Mr. Fine's testimony.

Moreover, Mr. Fine's concerns regarding the ability of Isle of Capri to finance both the Nemacolin and Cape Girardeau projects were validated in Isle of Capri's First Quarter 2011 Earnings Conference Call ("Isle of Capri Conference Call") during which Dale Black, Isle of Capri's Chief Financial Officer, indicated:

DALE BLACK: Growing and trying to grow does not come without a cost. As Virginia mentioned, we are very active pursuing two opportunities. As well, during the quarter we attempted to opportunistically access the equity markets as to provide a platform for several things. First, we were looking to pay down some on the revolver for the funds we recently borrowed to finance Rainbow. *We looked for this to provide a portion of the funding for Nemacolin, Cape or any of several other new opportunities we're pursuing* and to provide an equity base to help position our balance sheet as we continue to address leverage and the eventual refinancing of our bank debt in the next couple of years. Unfortunately, market sentiment turned on consumer-oriented stocks and regional gaming in particular, the week we entered the market, so we decided not to go forward with the offering. ... *We've had a few questions regarding Cape and Nemacolin and as we move forward here, there are*

other opportunities, should we be awarded either the Cape or Nemacolin license or both, we expect that there are a variety of ways to fund the projects, through our available credit facility, potential project financings or any combination thereof. ...

Attached hereto as Exhibit D is a transcript of the relevant portion of the call.⁴

Since the conclusion of the Board's licensing hearings on November 16-17, 2010, the Missouri Gaming Commission announced that it will award Missouri's 13th casino license on December 1, 2010. In addition, the Missouri Economic Research and Information Center ("MERIC"), the research division for the Missouri Department of Economic Development, issued a report examining the financial projections of the applicants under consideration, and the impact of cannibalization each applicant would have on existing gaming facilities in the state, ultimately indicating that Isle of Capri-Cape Girardeau will be the likely recipient of the Missouri license. See Excerpts from MERIC Report entitled, "Economic Analysis of Casino Applicants for Missouri's Gaming License" attached hereto as Exhibit E.

The MERIC Report provides that construction of the Missouri facility will be complete within two years, so that the first full year of operation of the new facility will be in 2013. See MERIC Report at 13. As such, assuming that this Honorable Board will award the Category 3 license either at its December 2010 or January 2011 public meetings, it will not be possible for Isle of Capri to stagger the Nemacolin and Cape Girardeau projects as Mr. Perry claims, without having to defer one of the projects post-licensure.

Nemacolin has not satisfied its burden of proving its financial stability under § 1313 of the Act, as evidenced by the lack of liquidity among the current hotel/resort, its parent company, 84 Lumber, and given the limitations of its prospective management company, Isle of Capri. 4 Pa. C.S. § 1313. As the Board is well-aware, the availability of financing has impeded new project development in the gaming industry in Pennsylvania as well as other jurisdictions. By way of example, the Board need only look to the Revel Entertainment project in Atlantic City, the Fountainbleau in Las Vegas and Centaur-Valley View here in Pennsylvania. The fact that MDR's project will be built from Penn National Gaming's cash on hand, as

⁴ The Isle of Capri Conference Call may be heard in its entirety at:
http://web.servicebureau.net/conf/meta?i=1113198733&c=2343&m=was&u=/w_ccbn.xml&date_ticker=ISLE.

opposed to requiring financing from a third-party lender MDR uniquely qualifies it to be awarded the final Category 3 slot machine license in Pennsylvania.

C. **MDR Has, By Far, The Least Impact of Any Applicant on Horsemen's Purse and Breeder Accounts.**

The title, "Pennsylvania Race Horse Development and Gaming Act," reflects the express legislative intent to benefit horsemen and breeders, as well as the horse racing industry in Pennsylvania. Accordingly, the Board must carefully consider each applicant's potential to adversely impact this material goal of the law.

There has been much discussion, but little clarification, of how the cannibalization of revenue from a Category 1 Licensee adversely affects horsemen and breeders, whether or not new slot revenue, or the same slot revenue is added at another PA facility. In fact, Board questions often inferred that adding more net revenue overall would have a positive impact on Horsemen and Breeders. In fact, the opposite is true.

The key provisions are found in § 1406 of the Gaming Act, which calls for purses, breeders funds and horsemen's health and welfare monies to be earned by the performance of slot machines and table games at the respective Category 1 facility. *Cannibalization of each and every dollar from a Category 1 facility results in an immediate decrease to purses, breeding money and health and welfare benefits for horsemen at that facility.* Purse monies are determined by the play at that specific facility and not by revenue earned at a competing facility. Conversely, the competing non-Category 1 facility actually reaps the benefits. The premise that more gaming revenue earned statewide, independent of which type of licensee earns it actually works to benefit the casino operators NOT the horsemen and breeders.

This concept and formula is illustrated by an exhibit presented by Penn National Gaming in its Post-Hearing Memorandum in Support of its Intervention Petition, a copy of which is attached hereto as Exhibit F.

As can be seen from the actual application of the formula to real revenues at a Category 1 facility, any cannibalization of revenues from that facility proportionately harms the horsemen and the breeders. This occurs whether or not the revenues are subsequently generated at a Category 2 or Category 3 facility.

Accordingly, the Board respectfully must conclude that MDR is the Category 3 applicant that would best protect benefits for the Horsemen and Breeders, consistent with the legislative objective of the Act.

D. Awarding a Category 3 License to Nemaquin or Fernwood Would Result in Significant Cannibalization of Revenues from Existing Licensees, Which is Inconsistent With the Legislative Intent of the Gaming Act.

The General Assembly expressly articulated its intention to advance several public policy objectives in enacting the Gaming Act. Those objectives are set forth in Section 1102 which provides, in relevant part:

... (2) The authorization of limited gaming by the installation and operation of slot machines as authorized in this part is intended to *enhance live horse racing, breeding programs, entertainment and employment in this Commonwealth.*

(2.1) The authorization of table games in this part is intended to *supplement slot machine gaming by increasing revenues to the Commonwealth and providing new employment opportunities* by creating skilled jobs for individuals related to the conduct of table games at licensed facilities in this Commonwealth.

(3) The authorization of limited gaming is intended to *provide a significant source of new revenue to the Commonwealth* to support property tax relief, wage tax reduction, economic development opportunities and other similar initiatives.

(4) The authorization of limited gaming is intended to *positively assist the Commonwealth's horse racing industry*, support programs intended to foster and promote horse breeding and improve the living and working conditions of personnel who work and reside in and around the stable and backside areas of racetracks.

(5) The authorization of limited gaming is intended to *provide broad economic opportunities to the citizens of this Commonwealth* ...

(6) The authorization of limited gaming is intended to *enhance the further development of the tourism market throughout this Commonwealth*, including, but not limited to, *year-round recreational and tourism locations* in this Commonwealth. ...

4 Pa. C.S. § 1102 (emphasis added). On its face, it is clear that the General Assembly intended that gaming would function generate a *new* stream of revenue for the Commonwealth that would fund tax relief, increase economic activity and employment opportunities, enhance tourism and assist the horse racing industry, as well as among support other causes benefitting the citizens of Pennsylvania.

It is self-evident that these public policy objectives are best served by maximizing the revenues generated from gaming in Pennsylvania. This is perhaps most clearly illustrated by the fact that the Act was amended to expand gaming to include table games less than four years after the first operator licenses were issued by the Board.⁵ In its Adjudication of the Category 2 licenses in revenue or tourism-enhanced locations, the Board noted:

⁵ It should also be noted that the Act defines "Revenue-or Tourism-Enhanced Location" as, "[a]ny location within this Commonwealth determined by the Pennsylvania Gaming Control Board, in its discretion, which will *maximize net revenue to the Commonwealth* or enhance year-round recreational tourism within this Commonwealth, in comparison to other proposed facilities

Evidence produced during the hearing process demonstrated to the Board's satisfaction that among the five proposals, there exists a broad range of revenue generation estimates which would be realized by the projects once the casinos were developed and operating at capacity. *This is of concern to the Board because the success of the applicant in generating revenues is directly related to the economic benefit of the Commonwealth through the receipt of tax revenues for the benefit of Pennsylvania citizens.*

Adjudication of the Pennsylvania Gaming Control Board in the Matters of the Applications for Category 2 Slot Machine Licenses in a Revenue or Tourism Enhanced Location, at 92-93 (emphasis added).⁶ This point was also expressly recognized by the Board during Nemacolin's October 25, 2006 licensing hearing:

COMMISSIONER COY: Let me try once again. I don't want to belabor it anymore. This is all I need to say about it.

The goal of producing revenue, that you just mentioned, is a goal of the entire Act. It applies to every category. It applies to every machine. ...

See 2006 Nemacolin Transcript at 50:17-51:3.

The argument advanced by Nemacolin and Fernwood that this Board should simply ignore the fact that awarding either of them a Category 3 license would not generate new revenues for the Commonwealth, and would instead significantly diminish revenues of existing licensees is entirely without merit. Nemacolin and Fernwood contend that the Board should close its eyes to the fact that their facilities are located in already-saturated markets and are contested by the operators of no fewer than three Pennsylvania licensed facilities—Sands Bethworks Gaming, LLC; Downs Racing, L.P.; and, Washington Trotting Association, Inc. Conversely, no Pennsylvania licensees have raised any objection to MDR's license application.

Nemacolin and Fernwood cite to passages of the Board's briefs in *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Board and Valley Forge Convention Center Partners, L.P.*, No. 191, MM 2009 ("*Valley Forge*"), in support of their assertion that the impact on revenues of existing licensees should not factor into the Board's current licensing decision. What Nemacolin and

and is otherwise consistent with the provisions of this part and its declared public policy purposes." (emphasis added). While this term relates to Category 2, and not Category 3 slot machine licenses, it serves as a further illustration that the concept of revenue maximization is integral to the statute.

⁶ Acknowledgement that the intention of the General Assembly and the public interest are best served by maximizing revenue is in no way inconsistent with recognition of the Board's ability and affirmative duty to exercise its independent discretion in selecting among potential licensees, however. To the contrary, § 1102 provides for several other objectives.

Fernwood fail to disclose however, is that the record in *Valley Forge* did not contain any evidence as to the likelihood and extent of revenue cannibalization:

Lastly, it is vital to note that, despite GGE's [*i.e.*, Greenwood Gaming and Entertainment, Inc.'s] assertions regarding the potential for revenue cannibalization, GGE failed to produce a single expert witness to support this argument. ...

See PGCB's Brief in *Valley Forge* at 42.

In contrast, the record before the Board is replete with evidence showing that awarding a Category 3 license to Nemacolin or Fernwood would result in significant cannibalization of revenue from existing Pennsylvania operators. A Table providing examples of the relevant evidence is attached as Exhibit G.

MDR is the only applicant for a Category 3 license that is not opposed by an existing operator. In fact, Robert DeSalvio, President of Sands Bethlehem testified before the Board that:

The Mason Dixon Applicant will maximize revenues consistent with the 2003 Innovation Group report to the Commonwealth. The proposed Mason Dixon Resort located near the Pennsylvania Maryland border would maximize revenue. ... [R]egardless of the percentage of cannibalization, we know from the Innovation Group report in 2003 that ***there would be no cannibalization of existing properties if the License were awarded to Mason Dixon.***

See Fernwood Transcript at 117:1-5, 120:25-121:4 (emphasis added). Fred Kraus, Sands' Vice-President and General Counsel similarly testified:

We're just saying Mason Dixon, by itself, is a preferred location to Fernwood. ***Fernwood is a market churner.*** You have two casinos in the Poconos already, Sands Bethworks is right outside. ***It's just churning the same business.***

See Fernwood Transcript at 125:1-5 (emphasis added).

Respectfully, these existing licensees have expended hundreds of millions of dollars and over \$50 million each in license fees to operate gaming facilities in Pennsylvania. The Commonwealth and the Board are essentially the licensees' business partners, thus the concerns voiced by the licensees merit serious consideration by the Board. Given the extensive factual record evidencing the revenue cannibalization that would result were the Board to award a Category 3 license to Nemacolin or Fernwood, the Board should, on this basis alone, award the license to Mason-Dixon Resort.

E. Isle of Capri's Record of Meeting Local Commitments is Blemished.

Among the suitability criteria to be considered by the Board for licensure as a gaming operator is: "The record of the applicant and its developer in meeting commitments to local agencies, community--based organizations and employees in other locations." 4 Pa. C.S. § 1325(c)(8). Section III-D of this brief, *supra*, addressed the fact that Nemaquin's project is being financed by Isle of Capri, which is facing cash flow and borrowing constraints that could impede their ability to complete Nemaquin, as well as the other development projects they are pursuing.

Published news reports suggest that Isle of Capri has, in the past withdrawn from jurisdictions where they had made commitments. *See e.g.*, "Isle of Capri disputes casino agreement statements" *Quad-City Times*, November 12, 2010, attached to MDR's Addendum to Notice of Intent to Present Comparative Evidence as to Nemaquin ("MDR's Addendum to Comparative Notice") as Exhibit M; Correspondence from counsel for Isle of Capri to Davenport City Attorney, dated, November 9, 2010, attached to MDR's Addendum to Comparative Notice as Exhibit N. Further, on an international scale, Isle of Capri abandoned facilities in the Bahamas and at Coventry in the United Kingdom. *See* "Isle of Capri Extends Transition at Bahamas Lucaya Resort" *Global Gaming Business*, July 7, 2009, attached hereto as Exhibit H.

F. A Substantial Majority of the Residents of Adams County Support the MDR Project.

Dr. Terry Madonna testified during MDR's licensing hearing regarding the findings of surveys he conducted in March and November 2010. His findings show that there is strong support for the MDR project among residents of Adams County. Specifically, Dr. Madonna's findings provide that:

- *62% of Adams County residents support the MDR project; and,*
- *62% of Adams County residents believe the MDR project will not harm the historic character of Adams County*

See MDR Transcript at 31-33. In addition, Dr. Madonna also notes that 20-25% of Pennsylvanians oppose gaming because they believe it to be morally wrong, and that some of the minority of Adams County residents who felt that the MDR project would harm the historic character of Adams County were, in his

judgment, people who opposed gaming on moral or other grounds. See Memorandum dated, November 18, 2010, attached as Exhibit 1 to MDR's Response to Board Requests.⁷

Consistent with Dr. Madonna's findings, awarding a Category 3 license to MDR would be supported by a substantial majority of Adams County residents.

G. MDR Has Proven that Heritage and Other Tourism will be Enhanced, not Harmed by a Casino Resort In Adams County.

In addition to the enormous support of Adams County residents and local and regional government officials, MDR has presented substantial evidence that supports a finding that developing a casino and upgrading the resort at Mason-Dixon will enhance, not detract, from the heritage tourism that already exists in Adams County and Gettysburg:

- 20% of visitors to MDR will visit the Battlefield at Gettysburg and its surrounding businesses. This equates to at least 115,000 new visitors, or a 9% increase. (*quoting*, Dr. Duarte Morais, MDR Transcript at 28:11-15).
- "[I]n all of the parks, national military parks in the State of Mississippi, Vicksburg National Military Park is the only park that has received in an increase in travel, at this point in time, year to year. We have a 2.4% increase. Nationally, what we found is that the national military parks system has had a little less than a one percent decrease in visitors, I think six-tenths of a percent less." The Honorable Paul Winfield, Mayor, Vicksburg, Mississippi, MDR Transcript at 98:13-21.

As such, MDR will enhance tourism by driving activity to local businesses in addition to the gaming revenues and tax dollars it will generate for the community and the Commonwealth, consistent with the General Assembly's policy objectives. The Board should take advantage of this opportunity to reinvigorate a great hotel resort in the South Central Pennsylvania market. 4 Pa. C.S. § 1102(6).

H. Mason-Dixon Resort will be Integrated and Operated by a Single Manager Controlling the Resort, Hotel, Amenities and the Gaming Experience, while Nemaquin and Fernwood will Operate With Sub-Contractors Unable to Coordinate their Gaming Facilities with the Overall Resort Experience.

MDR has entered in to agreements with Penn National Gaming for the management of the entire casino and resort complex, including amenities, hotel rooms, and meeting and convention space. Penn

⁷ Dr. Madonna's thesis is consistent with the Board's experience to date, in that virtually all Pennsylvania gaming licensees have experienced at least some degree of opposition by segments of the public.

National Gaming will function as the “turnkey” developer, and will bring to bear its substantial operations expertise to run the facility as a fully-integrated, seamless operation, coordinating marketing efforts with a view towards maximizing revenue potential. See MDR Transcript at 64:3-17.

By contrast, Nemaclin has effectively “leased” its remote Wild-Side building to a casino company who will operate it independently, and hope for coordination between the resort operator and the casino operator. All the rest of the resort facilities will stay under the control of Nemaclin Woodlands. See Nemaclin Transcript at 87:20-24. Similarly, Fernwood’s sub-contracting of the “casino amenity” to Penn National will prevent integration of the gaming facility with the resort and other amenities, but perhaps is not surprising given Fernwood’s stated motivation of selling timeshares: “Part of the reason that we’re here is that we want to attract people to the resort who will buy a timeshare.” See Fernwood Transcript at 155:25–156:2. Respectfully, the timeshare business is fundamentally incompatible with the casino business, and to MDR’s knowledge, there is not a single casino-resort in the United States that uses timeshares as the primary source of its room occupancy. Most gaming patrons expect complimentary rooms, not a sales pitch for a time-share. Selling week-long blocks to customers likely uninterested in casino gaming will do nothing to enhance gaming revenues, let alone contribute to attaining the figures that Fernwood has posited.

I. No Third Parties Would Have Standing to Appeal the Board’s Award of a Category 3 License to MDR.

No persons or entities have pursued intervention and achieved party status, or filed notices to contest in MDR’s licensing proceeding. As such, no one, other than an unsuccessful Applicant for a Category 3 License, would have standing to appeal the Board’s decision, were it to award the Category 3 License to MDR. The Pennsylvania Supreme Court held in *Citizens Against Gambling Subsidies, Inc. v. Pennsylvania Gaming Control Board*, 591 Pa. 312, 916 A.2d 624 (2007) that individual petitioners who did not pursue intervention to achieve party status in an administrative proceeding, and who did not allege a direct interest in the PGCB’s determination, did not have standing to appeal the Board’s order. See also, *Society Hill Civil Association, et al. v. The Pennsylvania Gaming Control Board*, 591 Pa. 1, 17, 928 A.2d 175, 185 (2007)

(holding that individuals and civic groups who failed to intervene in the Board's licensing proceedings did not have standing to appeal the Board's licensing decision).

The absence of any intervenors/contestors uniquely distinguishes MDR from all other applicants. This Board's decision in Valley Forge has been on appeal for well over a year. The fact that two casino licensees, Mohegan Sun at Pocono Downs and Sands Bethlehem have contested the Bushkill application; and, the fact that The Meadows has intervened in the Nemacolin application, make it far more likely that those projects would be delayed by extended appeals than MDR.

J. MDR Incorporates All Other Arguments Raised During Its Licensing Hearing, or which were Set Forth in its Notices of Intent to Present Comparative Evidence.

In addition to the foregoing, MDR incorporates by reference all of the arguments raised during its licensing hearing on November 16, 2010, as well as those set forth in MDR's Comparative Notices, MDR's Replies to the Notices of Intent to Present Comparative Evidence filed by other Applicants, as well as MDR's Addendum to its Comparative Notices, and all Exhibits thereto (*e.g.*, Distance from metropolitan areas; inability to recapture gaming revenue from other jurisdictions; distance from major traffic arteries; smaller construction investment; lack of job creation; use of foreign workers; leasing of land for natural gas drilling; and proximity to houses of worship and child care facilities).

CONCLUSION

For the foregoing reasons, the Pennsylvania Gaming Control Board should award Mason-Dixon Resorts, L.P. a Category 3 Slot Machine License.

Respectfully submitted,

s/ Stephen D. Schrier

BLANK ROME LLP

Stephen D. Schrier, Esquire

Eric G. Fikry, Esquire

DOHERTY HAYES, LLC

Kevin C. Hayes, Esquire

James A. Doherty, Esquire

Attorneys for Mason-Dixon Resorts, L.P.

Dated: November 29, 2010

EXHIBIT A

Monday, October 25, 2010
9:20 PM

PENNSYLVANIA GAMING CONTROL BOARD

SUITABILITY HEARING

IN RE: WOODLANDS FAVETTE

PENNSYLVANIA STATE MUSEUM
THIRD AND FORSTER STREETS
HARRISBURG, PENNSYLVANIA

OCTOBER 29, 2006, 2:02 P.M.

BEFORE:

TAD DECKER, CHAIRMAN
JEFFREY ANGELI
MARY DIAGIACOMO COLINS - Telephonically
JEFFREY W. COY
JOSEPH W. "CHIP" MARSHALL, III
KENNETH McCABE
SANFORD RIVERS
DENNIS WOLFF, PA SECRETARY OF AGRICULTURE
GREGORY J. PAZI, PA SECRETARY OF REVENUE

LORRAINE I. HERMAN, RPA
REPORTER - NOTARY PUBLIC

Screen clipping taken: 11/29/2010, 4:44 PM

1 that we have made with the design and
2 construction schedule for the actual gaming
3 facility.

4 The facility is located on Route 40,
5 approximately 1 mile from the central resort
6 check-in facility. The 51,000-square-foot
7 facility is approximately 24,000 square feet of
8 public space for 500 machines and will
9 accommodate a 56-seat food court, an 84-seat
10 lounge and a retail operation.

11 We have tentatively chosen a date of
12 mid-April 2007 for opening, should the license
13 be granted to the Woodlands Fayette. We have
14 currently sent the project out for bid and have
15 received three bids at the resort.

16 We expect to award the contract for the
17 construction of the facility by the end of this
18 week, should our suitability -- pardon me.
19 Should our suitability to pursue a license be
20 favorable and our questions regarding core
21 issues such as the patron fees be answered,
22 actual construction of the facility will
23 commence in March -- or excuse me -- November
24 1st, 2006, and is scheduled to complete by March
25 15th, 2007. This will allow us to set machinery

Screen clipping taken: 11/29/2010, 4:45 PM

22 What I would be interested in, and I
23 guess, Mr. Mathew, maybe you can tell me how
24 much of your enterprise is built on an
25 expansive, reasonable reading of that patron --

52

1 patron of the amenities provision.

2 MR. MATHIEU: I think it is suffice to
3 say that as we created our business model going
4 forward, with this interpretation, it is
5 necessary for the viability, in our opinion, of
6 this amenity, if you will.

7 COMMISSIONER MARSHALL: So asked
8 another way, if you limit it to a reading that
9 said, you have to either be a patron of the
10 hotel, a guest of the hotel or a patron of one
11 of the non-gambling amenities on the hotel, a
12 daily golfer or something like that, this thing
13 won't fly?

14 MR. KOHLER: Essentially, Commissioner,
15 a daily use requirement where --

16 CHAIRMAN DECKER: So you wouldn't be
17 financially viable?

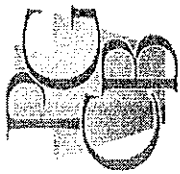
18 MR. MATHIEU: That's correct.

19 CHAIRMAN DECKER: You have another
20 issue here.

21 COMMISSIONER MARSHALL: Could you

Screen clipping taken: 11/29/2010, 4:45 PM

EXHIBIT B



Pennsylvania Gaming Control Board

Report of the Financial Suitability Task Force

Estimated Gross Terminal Revenue - Stabilized Year

Category 3 Applicants

Applicant	Estimated # of Machines	Applicant Estimates		Financial Suitability Task Force Estimates	
		Slot Win Per Day	Gross Terminal Revenue	Slot Win Per Day	Gross Terminal Revenue
Woodlands Fayette, LLC	500	\$189.00	\$34,492,500	\$164.00	\$29,930,000

Key Terms

Gross Terminal Revenue: Gross amount of Gaming Revenues expected to be generated. (Slot Win Per Day x # of Machines) x 365 Days in Operation

Stabilized Year: A future year of operations after the facility has had time to refine its operations. A Stabilized year captures competition from assumed competitive facilities.

Estimated # of Machines: The number of machines reported by the Applicant that it plans to install and have operational in a Stabilized Year.

Slot Win Per Day The average daily gaming revenue per slot machine. (Gross Terminal Revenue ÷ # of Machines) ÷ 365 Days of Operation

Note: In each instance, the Pennsylvania Gaming Control Board Financial Suitability Task Force used a stabilized year. The use of Task Force estimates cannot be used to predict overall total gross terminal revenue from gaming in Pennsylvania. To compile estimate projections for each applicant, the Task Force had to include any potential competition for that applicant. This means possible revenues from applicants that may not be ultimately awarded a license and go into operation were still used to create competition. This results in, essentially, more competition that would actually occur statewide. Simply adding the Task Force figures would produce low and incorrect assumptions of total statewide gaming revenue.

Notes on Assumptions Used

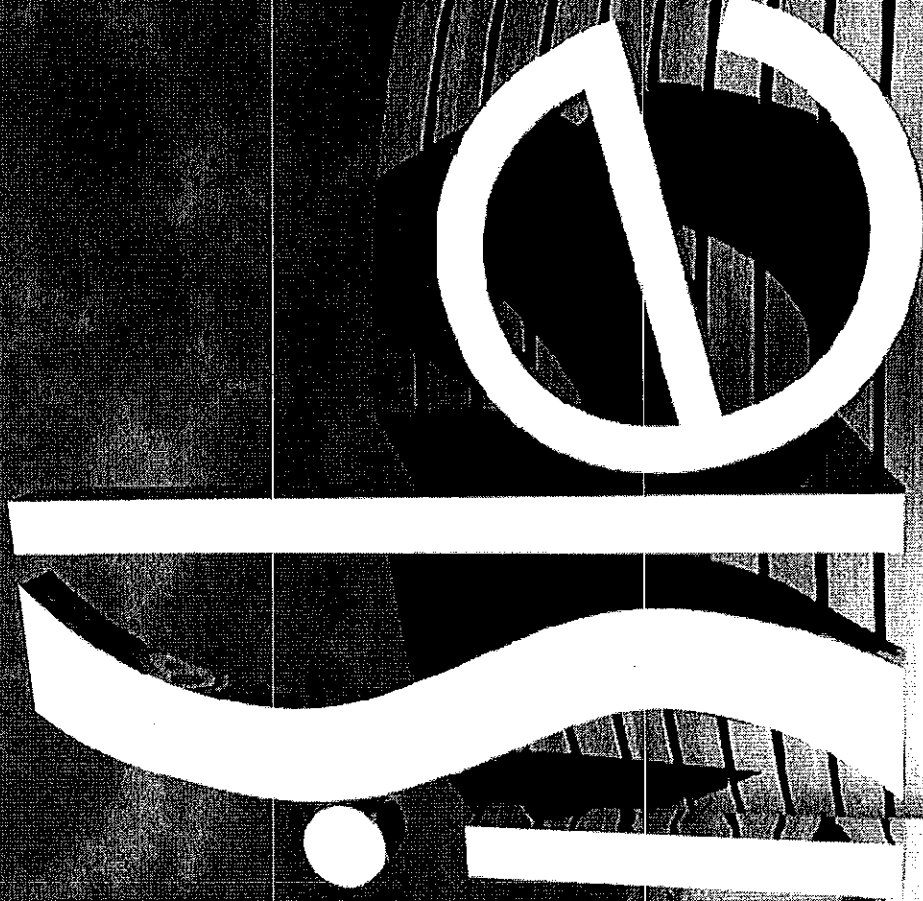
Woodlands Fayette, LLC - Assumption Differences

The Task Force takes into consideration competition from the proposed proposed Category 2 Crossroads facility, the Applicant does not.

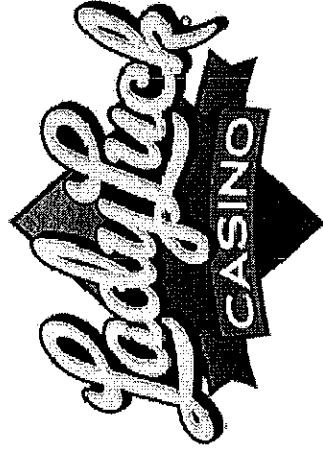
EXHIBIT C

**Presentation to the
Missouri Gaming
Commission**

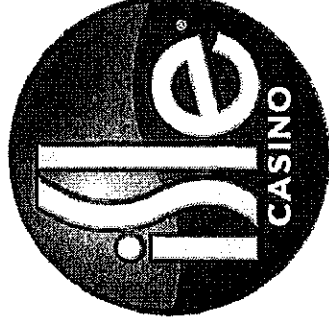
October 20, 2010



Our two brand strategy
expands the customer base
with two products in the same family



Focus on close proximity patrons
Limited amenities
Product driven (gaming devices)



Focus on regional patrons
Expanded amenities
Conference and experience driven

EXHIBIT D

Last Quarterly Report of Isle Archived Conference Call

Speaker	Transcription
Dale Black, Isle of Capri Chief Financial Officer:	<p>Growing and trying to grow does not come without a cost. As Virginia mentioned, we are very active pursuing two opportunities. As well, during the quarter we attempted to opportunistically access the equity markets as to provide a platform for several things. First, we were looking to pay down some on the revolver for the funds we recently borrowed to finance Rainbow. We looked for this to provide a portion of the funding for Nemaclin, Cape or any of several other new opportunities we're pursuing and to provide an equity base to help position our balance sheet as we continue to address leverage and the eventual refinancing of our bank debt in the next couple of years. Unfortunately, market sentiment turned on consumer-oriented stocks and regional gaming in particular, the week we entered the market, so we decided not to go forward with the offering. We incurred approximately \$1.1 million in expenses related to the offering, which were expensed in the quarter. Additionally, we incurred approximately \$1.1 million of acquisition-related expenses related to Rainbow, which were also expensed in the quarter. In addition to these things, one thing you'll notice in our income statement now that hasn't been entered in the past, is when we did our recent amendment to our credit facility in January, several of the swaps and hedging instruments that we had put in place were deemed no longer effective for accounting purposes. And approximately \$1.5 million of expense which normally – historically had ran through equity, now runs through the income statement and that was in there this year that wasn't in last year. All total, these three things added up to approximately seven cents of additional expense in the quarter. We've had a few questions regarding Cape and Nemaclin and as we move forward here, there are other opportunities, should we be awarded either the Cape or Nemaclin license or both, we expect that there are a variety of ways to fund the projects, through our available credit facility, potential project financings or any combination thereof. With that, we'll now entertain questions.</p>

EXHIBIT E



Economic Analysis of Casino Applicants for Missouri's Gaming License

Prepared for the Missouri Gaming Commission
November 2010



EXECUTIVE SUMMARY

Three applicants for Missouri's thirteenth casino license are analyzed in this economic report prepared for the Missouri Gaming Commission (MGC). The MGC contracted with the Missouri Economic Research and Information Center (MERIC), within the state's Department of Economic Development, to research the potential economic impacts each applicant would have to Missouri and the gaming industry. A primary concern was to place the applicant's positive impacts in context with the sales that existing casinos may lose as a result of new market competition (sales cannibalization).

MERIC reviewed existing research and market studies, received input from both current casinos and applicants, and applied spatial analysis and economic models to assess the overall economic impact of each applicant to Missouri. Three scenarios, a worst, average, and best case, were used to determine how outcomes would differ given a range of cannibalization effects.

Findings

In all three scenarios, *Isle of Capri-Cape Girardeau* generated the highest net new casino revenue and gaming taxes, new employment, and, overall Gross Domestic Product. *Casino Celebration-St. Louis* was consistently second in all three scenarios while *Paragon Gaming-Sugar Creek* was third.

The primary reason for this outcome is that *Isle of Capri*, while smallest of the three in project size, takes the least amount of revenue from existing casinos. All of the applicants have submitted proposals for medium-sized facilities but only *Isle of Capri* is far enough from existing Missouri casinos to minimize cannibalization.

Although *Casino Celebration's* overall investment and employment are somewhat larger than *Paragon* and *Isle of Capri*, its size, given the proposed location, is not substantial enough to overcome the negative cannibalization effects it would have on existing Missouri casinos. It would, however, have less displacement than *Paragon* as Illinois casinos bear a good share of the sales impact.

Paragon was third in all scenarios due to the large amount of cannibalization it would have on existing Missouri casinos clustered in Kansas City. Current gaming facilities and the *Paragon* location are all within five miles of competitors. *Paragon* would also begin operations one year after the opening of a large casino in Kansas. The *Hollywood Casino* at the Kansas Speedway will open in 2012 and compete strongly for gaming revenue throughout the Kansas City Metro.

Applicant Figures*		Casino Celebration St. Louis City	Isle of Capri Cape Girardeau	Paragon Gaming Sugar Creek
	Investment	\$132M	\$125M	\$107M
	Gaming Positions	1,636	1,168	1,480
	Casino AGR	\$126.1M	\$80.9M	\$103.4M
	Casino Jobs	565	516	573
Research Findings**	Net New Casino AGR	\$56.8M	\$76.2M	\$21.7M
	New Gaming & Admin. Taxes	\$15.7M	\$20.7M	\$5.8M
	Total New Jobs	476	726	280
	New State GDP	\$45.2M	\$55.0M	\$20.2M

* Information reported by applicants. All dollar figures in millions. AGR is annual average over five years.

** Findings for average scenario includes net new figures reflecting cannibalization of existing casinos. Net new AGR, gaming taxes, employment, and GDP are annual averages for seven years (two construction and five operation years). Total employment includes direct and indirect jobs calculated in the economic model.



Analysis of the Lumiere Place Competitive Impacts

From analysis of Missouri gaming markets, it was clear that the opening of the *Lumiere Place* casino offered the best chance to understand recent competitive effects in Missouri markets. The *River City Casino*, which opened in March 2010, was too new to analyze for any long-term impacts.

Total AGR for all Missouri casinos had stayed relatively level in the two years prior to *Lumiere Place* opening, with a slight decline of 0.15 percent from November 2005 to November 2007. This static state, however, was jolted upward by events that began to unfold in late 2007.

In December 2007 the *Lumiere Place* casino opened in downtown St. Louis. A month later a smoking ban was enacted in Illinois casinos causing many Illinois gamers to cross over to casinos on the Missouri side. While these two events were good for Missouri gaming revenue, the nearly simultaneous occurrence created problems for understanding how much influence each incident had. Furthermore, the smoking ban has now been in place for several years which has undoubtedly continued to give Missouri casinos a boost at the expense of Illinois.

The St. Louis Federal Reserve Bank recently analyzed the smoking-ban issue (Garrett, 2010) but admitted that an exact estimate in the St. Louis market was difficult due to *Lumiere Place's* opening. However, the report's analysis does show that Illinois casinos, as a whole, declined by more than 20 percent in revenue following the ban. That analysis holds true in the St. Louis market as well.

During 2008, the older St. Louis Missouri casinos (*Harrah's*, *Ameristar*, and *President*) lost a total AGR of \$61.6 million as compared to the year before while *Lumiere Place* brought in \$162.6 million. This means that only \$101 million of *Lumiere Place's* AGR was new to Missouri (\$162.6–\$61.6 million). A simple net new rate to the state, without considering the smoking ban which gained Missouri casinos, would be 62 percent, or \$101/\$162.6 million.

However, St. Louis Illinois casinos (*Casino Queen* and *Alton Belle*) also declined by \$63.4 million, or 20 percent. If all Illinois losses were attributed to the smoking ban and had gone to *Lumiere Place*, then the casino's new total market AGR would have been \$37.6 million (\$162.6–\$61.6–\$63.4 million). In this scenario, *Lumiere Place's* net new total market AGR would be 23 percent, or \$37.6/\$162.6 million.

Both of these 2008 net new AGR estimates for *Lumiere Place*, 23 to 62 percent, represent unrealistic lower and upper limits since the effects of the casino and the smoking ban cannot be separated to gauge what was truly new to Missouri. But these boundaries do point to a reasonable middle ground of net new *Lumiere Place* AGR to Missouri (average would be 43 percent) which is useful in future scenario development.

The research into *Lumiere Place's* overall impact to St. Louis was an important gauge of how the larger metro markets in Missouri might respond to a new market entrant in 2013. While certainly other factors such as the recession and recovery will influence casino growth rates in the years ahead, this example would serve to inform researchers of possible growth scenarios.

Projection of Existing Casino AGR

The first full year of operation for a new casino is expected to be 2013 as it will take the better part of two years to complete the investment and construction phases. Setting a future baseline for the expected AGR of existing casinos was important to determine how much impact a new casino would have.

One of the first considerations of AGR growth is the change in population. The gaming population, adults 21 and older, grew at an annual statewide rate of 1.0 percent from 2000 to 2009. Projections out to 2014 show that the Kansas City metro is expected to closely match that population growth rate while St. Louis and Cape Girardeau will see lower rates (see *Population Growth Estimates Table on next page*).



EXHIBIT F

CALCULATION OF ASSESSMENTS TO PA RACE HORSE DEVELOPMENT FUND/DISTRIBUTION TO HORSEMEN

Line #	Calculation	Week of 11/8/10 - 11/14/10	
		Actual	Penn Harris Impact ⁽²⁾
5	HCPN revenues		2,811,154
6	Total Category 1 Revenues	4,685,257	26,964,061
7	Total Statewide Revenues	28,838,164	43,637,731
		43,637,731	
11	Assessment Calculation		
12	Category 1 revenues	28,838,164	26,964,061
	18% of Cat 1 revenues	5,190,870	4,853,531
14	Assessment Subject to 12% cap on Statewide revenues	5,236,528	5,236,528
16	<i>Total Paid in to PRHDF ⁽¹⁾</i>	5,190,870	4,853,531
18	HCPN Assessment	557,329	312,666
19	Total Category 1 Paid in to PRHDF	3,430,406	2,999,031
23	Distributions to HCPN Horsemen:		
24	Total Paid in to PRHDF	5,190,870	4,853,531
25	17% to General State Fund	(882,448)	(825,100)
	Available for Distribution to Horsemen	4,308,422	4,028,431
27	HCPN Distribution Calculation:		
28	HCPN Assessment	557,329	312,666
29	HCPN Assessment % of Total Cat 1 Assessments	16.25%	10.43%
31	<i>Total Distributed to HCPN Horsemen</i>	699,977	419,986

⁽¹⁾ Pennsylvania Race Horse Development Fund

⁽²⁾ Penn Harris impact assumes HCPN revenue reduced by 40%, impacted total Category 1 revenues by same amount, but total Statewide revenues remain consistent

EXHIBIT G

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Isle of Capri Extends Transition At Bahamas Lucaya Resor

By GGB Staff Tue, Jul 07, 2008

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Agreement saves jobs during search for new operator

Isle of Capri Casinos, Inc. will continue to operate the casino at Our Lucaya Resort at Freeport, Grand Bahama, at least through the end of August. Under certain circumstances, the operator could extend the period by another two months, to allow a new operator to receive all the necessary approvals.

The agreement between Isle of Capri, the government of the Bahamas and Hutchison Lucaya Ltd., which owns the resort, also has Isle of Capri assisting in the search for a new casino operator. Several operators have shown interest, and the final decision will be made by the government and the resort owner.

Paul Keller, senior vice president and chief development officer at Isle of Capri, said, "We have worked hard to reach a mutually agreeable conclusion with the Bahamian government, and we truly appreciate all of their hard work on behalf of their citizens to put a plan in place with the goal of a seamless, timely transition.

"Moving forward, our goal is to fulfill our own strategic plan while helping to ensure that a first-class gaming operation continues on Grand Bahama and that a change in management is as simple as possible for the employees at the facility, who have continued to work hard and prove their dedication through this process."

In early March, Isle of Capri announced it would close the casino at the end of May. The new transition agreement is seen as a win for over 200 employees who would have been out of work.

The move is part of Isle of Capri's strategy to focus on its domestic U.S. operations. Earlier this year, the company exited its casino at Coventry in the U.K.